STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LOIS A. MORGAN	:	ORDER DTA NO. 818746
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1994.	:	

Petitioner, Lois A. Morgan, 26 Birchwood Court, West Windsor, New Jersey 08550, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1994.

The Division of Taxation ("Division") by its representative, Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel), filed a motion on March 5, 2002 for an order vacating demands for bills of particulars and requests for admissions dated January 11, 2002 and filed by petitioner, Lois A. Morgan, and her representative, Charles C. Morgan. Petitioner and her representative filed a response to the Division's motion on March 25, 2002, which date began the 90-day period for the issuance of this order. Based on the pleadings, motion papers and other documents filed by the parties, Timothy J. Alston, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Petitioner commenced this proceeding by filing a petition with the Division of Tax Appeals on September 15, 2001. The petition was filed in protest of a Notice of Deficiency dated March 12, 1998 which asserted $1,300.34 in additional income tax due, plus interest, for

the year 1994. Before filing her petition, petitioner filed a request for conciliation conference with the Division's Bureau of Conciliation and Mediation Services. Following a conciliation conference, the Bureau of Conciliation and Mediation Services issued a Conciliation Order dated June 29, 2001, which recomputed the statutory notice at issue to $1,138.00 in additional tax due, plus interest.

2. Petitioner filed three Demands for Bills of Particulars dated January 11, 2002 captioned, respectively, "Citations," "Facts," and "Demand for Documents."

3. In the "Demand for a Bill of Particulars: Citations" petitioner makes the following demands:

(a) Item 1 requests that the Division provide citations to any and all legal authority related to the Division's assertion of a deficiency against petitioner individually where petitioner filed a joint return.

(b) Item 2 requests citations with respect to the issuance of a "second simultaneous assessment . . .when there exists a pending, unresolved prior assessment."

(c) Items 3 through 5 request citations related to issues of merger, waiver and estoppel arising from the cancellation of assessment number L014431075.

(d) Item 6 requests "citations to any and all legal authority upon which the Division bases its determination that the income in question . . . was secured or earned pursuant to activities connected with or derived from New York sources."

(e) Items 7 through 12 request citations upon which the Division bases determinations that the income in question was paid to petitioner for current services; for previous services; as deferred compensation for previous services; as severance pay for surrendering her right to

continued employment; as wage continuation in respect of work performed in prior periods of employment; and was not received by petitioner on a leave of absence.

(f) Item 13 requests citations upon which the Division bases its determination that "the Division did not err" when it "modified the notice of deficiency in its letter of June 6, 2001 to reduce the tax asserted due based on 20 NYCRR 132.18 by failing to include leave with pay in its calculation of the reduction in the allocation of wages to New York sources."

(g) Item 14 requests citations upon which the Division bases its determination that "the Division did not err" when it determined "that the allocation of wages to New York sources should be 87.5 percent rather than 0.0 percent for the income in question."

(h) Item 15 requests citations upon which the Division bases its determination that "the Division did not err" when it "issued its Response to Taxpayer Inquiry with respect to Assessment ID L-014717270-7 dated August 31, 1998 stating 'Assessment # L 014717270 was issued to Lois A. Morgan in place of the previous assessment.'"

4. In her "Demand for a Bill of Particulars: Facts" petitioner makes the following demands:

(a) Item 1 requests particulars regarding the elements of petitioner's position with which the Division agreed and to which the Division referred in its letter dated March 30, 1998 in canceling assessment number L014431075.

(b) Item 2 requests that the Division provide particulars with respect to positions taken by petitioner in this proceeding which the Division believes are different from positions taken by petitioner in its contact with the Division regarding assessment number L014431075.

(c) Item 3 requests that the Division particularize all elements of petitioner's current position with which the Division does not now agree.

(d) Item 4 requests that the Division "state all of the facts upon which the Division has based its determination that the income in question . . . was secured or earned pursuant to activities connected with or derived from New York sources."

(e) Items 5 through 11 of the demand requests that the Division "state all of the facts upon which the Division bases its determination that the income in question was paid to petitioner for current services; for previous services; as deferred compensation for previous services; as severance pay for surrendering her right to continued employment; as wage continuation in respect of work performed in prior periods of employment; the dates of such prior employment; and was not received by petitioner on a leave of absence.

(f) Item 12 requests that the Division state all of the facts upon which the Division bases its determination that "the Division did not err" when it "modified the notice of deficiency in its letter of June 6, 2001 to reduce the tax asserted due based on 20 NYCRR 132.18 by failing to include leave with pay in its calculation of the reduction in the allocation of wages to New York sources."

(g) Item 13 requests that the Division state all of the facts upon which the Division bases its determination that "the Division did not err" when it determined "that the allocation of wages to New York sources should be 87.5 percent rather than 0.0 percent for the income in question."

(h) Items 14 and 15 request the facts underlying the Division's "decision to reject" letters from Prudential employees which were submitted by petitioner during the audit.

(i) Item 16 essentially restates the request in item 13.

(j) Item 17 requests that the Division "state any other bases why 20 NYCRR 132.18(a)" should not apply to the income in question.

5. In her "Demand for a Bill of Particulars: Demand for Documents" petitioner seeks "a copy of any and all memoranda, papers, letters, emails, or other documents, tapes, or other media, whether on paper or in electronic form, pertaining to the income which is the subject of this petition."

6. Petitioner also filed three Requests for Admissions dated January 11, 2002 captioned, respectively, "Facts Within the Knowledge of the Division of Taxation," "Genuineness of Papers and Documents," and "Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry."

7. On January 30, 2002 the Division requested "extensions of time in which to respond, object, move to vacate, or move to modify" petitioner's Requests for Admissions and Demands for Bills of Particulars. In response, a letter dated January 30, 2002 from Assistant Chief Administrative Law Judge Daniel J. Ranalli to the Division stated in relevant part: "Your time to file a response to the bills of particulars and notices to admit filed by petitioner . . . will be extended to March 5, 2002."

8. On March 5, 2002 the Division filed a motion for an order vacating in their entirety petitioner's demands for bills of particulars and for an order vacating certain of the requests for admissions.

9. With respect to petitioner's "Request for Admissions: Facts Within the Knowledge of the Division of Taxation," the Division objected to paragraphs "1" through "6," "9 through "26," "31," "32," "35," and "36." The Division filed a response to paragraphs "7," "8," "27"through "30," "33," and "34."

10. The Division filed a response to paragraphs "1" through "3" of petitioner's "Request for Admission: Genuineness of Papers and Documents."

11. With respect to petitioner's "Request for Admissions: Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry," the Division filed a response to paragraphs "2," "4" through "20," and "22" through "33." The Division objected to paragraphs "1," "3," and "21" of this request.

12. Petitioner filed a response to the Division's motion dated March 25, 2002. In her response, petitioner made the following motions:

(a) Petitioner asserted that the Division's motion was untimely and therefore moved that the Division's motion be denied and further moved for an order of preclusion with respect to the items of which particulars have not been provided. In the alternative petitioner moved for an order directing the Division to furnish a bill of particulars as demanded by petitioner.

(b) Petitioner moved for cancellation of the statutory notice based upon the Division's failure to provide, through the demands for bills of particulars, information related to issues of merger, waiver and estoppel arising from the cancellation of assessment number L014431075. Alternatively, petitioner sought an order of preclusion with respect to such information.

(c) Petitioner moved that the Division be found to have admitted certain allegations made in her petition in light of certain paragraphs in the Division's amended answer.

(d) Petitioner moved for an order directing the Division to respond to all of petitioner's requests for admissions or, alternatively, an order finding that the Division is deemed to have admitted all of the facts requested by petitioner.

(e) Petitioner moved for an order deeming the Division's failure to deny paragraphs 1, 3, and 21 of "Request for Admissions: Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry" to constitute admissions, or,

alternatively, that the Division be directed to make reasonable inquiries with respect to such requests.

(f) Petitioner moved for an order finding that the Division's "failure to make reasonable inquiry" with respect to paragraphs 1 through 5, 7 through 15, 17, and 19 through 33 of petitioner's "Request for Admissions: Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry" constitutes an admission, or, alternatively, an order directing the Division to make reasonable inquiry of Prudential with respect to such requests.

(g) Petitioner moved for cancellation of the notice at issue based upon actions of the Division's attorney. Petitioner asserts that the attorney, either willfully or negligently, among other transgressions, has obfuscated the facts and issues herein; is attempting to maximize the scope of proof at hearing; is frustrating the intent of the Rules of Practice and Procedure; has harassed the petitioner; has sought to hide the truth; and has violated fundamental notions of decency and fair play. As an alternative to cancellation, petitioner seeks the removal of the Division's attorney and the appointment of a new attorney.

(h) In the event that the notice herein is not canceled, petitioner seeks a hearing to the extent that petitioner's motions and objections herein are not granted.

13. In her motion papers, petitioner clarified or restated certain of the "Request for Admissions: Facts Within the Knowledge of the Division of Taxation" as follows:

(a) Paragraph 7 requests an admission that petitioner has not previously claimed a refund from the State of New York for a refund of taxes paid to New York.

(b) Paragraph 8 is restated as follows: "Admission that Prudential was the sole payer of the income received by petitioner during the period January 28, 1994 to March 18, 1994 as reflected

in the Prudential Statements attached to petitioner's Request for Admissions: Genuineness of Papers and Documents and which is the subject of this proceeding."

(c) Paragraph 29 requests that the Division admit that the correct amount that a taxpayer was supposed to enter on Line 1 of the Federal Amount column on Form IT-203 for the year/period 1994 was supposed to be the total reported on the 1994 Federal return.

(d) Paragraph 30 requests that the Division admit that the correct amount that a taxpayer was supposed to enter on Line 1 of the Federal Amount column on Form IT-203 for the year/period 1994 was supposed to be the total reported on the 1994 Federal return, including income earned by petitioner's spouse.

14. In her motion papers petitioner also clarified or restated the following "Requests for Admissions: Facts With Respect to which There Can Be No Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry":

(a) Paragraph 1 is restated: "Admission that petitioner showed a New Jersey street address and claimed Non-Resident status on the IT-203 filed by petitioner for the tax year 1994."

(b) Paragraph 21 is restated : "Admission that Prudential did not have a leave of absence plan which granted Petitioner any enforceable right, legal or otherwise, to take a leave of absence with pay during 1994 from Prudential."

CONCLUSIONS OF LAW

A. The Tax Appeals Tribunal Rules of Practice and Procedure permit the use of a bill of particulars in proceedings in the Division of Tax Appeals. Specifically, section 3000.6(a) of the Rules provides as follows:

> (1) After all pleadings have been served, a party may wish the adverse party to supply further details of the allegations in a pleading to prevent surprise at the hearing and to limit the scope of the proof. For this purpose, a party may

> serve written notice on the adverse party demanding a bill of particulars within 30 days from the date on which the last pleading was served.
>
> (2) The written demand for a bill of particulars must state the items concerning which such particulars are desired. If the party upon whom such demand is served is unwilling to give such particulars, he or she may, in writing to the supervising administrative law judge, make a motion to the tribunal to vacate or modify such demand within 20 days after receipt thereof. The motion to vacate or modify should be supported by papers which specify clearly the objections and the grounds for objection. If no such motion is made, the bill of particulars demanded shall be served within 30 days after the demand, unless the administrative law judge designated by the tribunal shall direct otherwise.
>
> (3) In the event a party fails to furnish a bill of particulars, the administrative law judge designated by the tribunal may, upon notice, preclude the party from giving evidence at the hearing of items of which particulars have not been delivered.
>
> (4) Where a bill of particulars is regarded as defective by the party upon whom it is served, the administrative law judge designated by the tribunal may, upon notice, make an order of preclusion or direct the service of a further bill. In the absence of special circumstances, a motion for such relief shall be made within 30 days after the receipt of the bill claimed to be insufficient.
>
> (5) A preclusion order may provide that it will be effective unless a proper bill is served within a specified time.

B. Petitioner's contention that the Division's motion was untimely is rejected. Petitioner asserted that Judge Ranalli's letter was limited by its express terms to an extension of time for the Division to file a "response" to petitioner's requests for admissions and demands for bills of particulars. According to petitioner, Judge Ranalli therefore implicitly denied the Division's request for an extension of time to "object, move to vacate, to move to modify." I disagree. The word "response" as used in this context is a generic term and properly includes an objection, motion to vacate, motion to modify, or a bill of particulars.

Petitioner also contended that section 3000.6(a)(2) of the Rules of Practice and Procedure does not provide discretion to an administrative law judge to grant an extension of time for a motion to vacate or modify. I disagree. The Rules of Practice and Procedure are to be "liberally

construed to secure the just, speedy and inexpensive determination of every controversy" (20 NYCRR 3000.0[c]). Accordingly, I find that section 3000.6(a)(2) does provide an administrative law judge with discretion to grant an extension of time to file a motion to vacate or modify a demand for a bill. Additionally, section 3000.23(b) of the Rules of Practice and Procedure specifically grants to administrative law judges the authority to order extensions of time such as was granted in the instant case. Accordingly, I find that the extension was properly granted.

Demands for Bills of Particulars

C. As noted above, the Rules provide that a party may serve a demand for a bill of particulars upon an adverse party in order "to prevent surprise at the hearing and to limit the scope of the proof" (20 NYCRR 3000.6[a][1]). Generally, under the CPLR, a party need particularize only those matters upon which it has the burden of proof (***see***, ***Holland v. St. Paul Fire & Marine Ins. Co.***, 101 AD2d 625, 475 NYS2d 156, 157). In proceedings in the Division of Tax Appeals a presumption of correctness attaches to a notice of deficiency and the petitioner bears the burden of overcoming that presumption (***see***, ***e.g.***, ***Matter of Estate of Gucci***, Tax Appeals Tribunal, July 10, 1997 citing ***Matter of Atlantic & Hudson***, Tax Appeals Tribunal, January 30, 1992). This assignment of the burden of proof notwithstanding, the Rules of Practice and Procedure provide that the answer "shall fully and completely advise the petitioner and the division of tax appeals of the [Division of Taxation's] defense [to the petition]" (20 NYCRR 3000.4[b][2]). In this context the Division may be required to respond to a demand for a bill of particulars under the Rules to amplify its answer.

D. With respect to the "Demand for a Bill of Particulars: Citations," the following rulings are made:

(1) The Division is directed to furnish a bill with respect to items 6 and 14 of the demand. The Division's amended answer affirmatively states that "petitioner received compensation for tax year 1994 attributable to New York sources." The Division's full and complete response to item 6 of the demand will amplify the Division's pleading and will provide petitioner with the legal authority for the Division's assessment. The Division's response to item 14 will provide petitioner with the legal authority for the adjustment to the assessment made in the Conciliation Order dated June 29, 2001.

(2) The Division's motion to vacate is granted with respect to items 1 through 5, 7 through 13, and 15 of petitioner's "Demand for a Bill of Particulars: Citations."

Items 1 through 5 and 15 of the demand relate to issues of estoppel, waiver, and merger arising from the cancellation of assessment number L014431075. While petitioner may raise these issues as an affirmative defense to the statutory notice at the hearing, these items go well beyond the affirmative statements in the Division's amended answer and are properly vacated. Further, I disagree with petitioner's assertion with respect to the burden of proof on the estoppel issue. Clearly, petitioner, as the party raising this defense, must first establish the identity of issues and that the issue was necessarily decided in an earlier action before any burden would shift to the Division (***see***, ***Schwartz v. Public Administrator***, 24 NY2d 65, 73, 298 NYS2d 955, 962).

Items 7 through 13 of this demand go beyond an amplification of the affirmative statements made by the Division in its answer and go beyond demanding particulars regarding the basis for the assessment. These items are therefore properly vacated.

E. With Respect to the "Demand for a Bill of Particulars: Facts," the following rulings are made:

(1) The Division is directed to furnish a bill with respect to items 4 and 13 of the demand. As noted above, the Division's amended answer affirmatively states that "petitioner received compensation for tax year 1994 attributable to New York sources." The Division's full and complete response to item 4 of the demand will amplify the Division's pleading and will provide petitioner with the facts upon which the Division bases its assessment. The Division's response to item 13 will provide petitioner with the facts upon which the Division adjusted the assessment as indicated in the Conciliation Order dated June 29, 2001.

(2) The Division's motion to vacate is granted with respect to items 1 through 3, 5 through 12, and 14 through 16 of petitioner's "Demand for a Bill of Particulars: Facts."

Items 1 and 2 demand facts which relate to issues of estoppel, waiver and merger arising from the cancellation of assessment number L014431075. As discussed above, while petitioner may raise these issues as an affirmative defense to the statutory notice at the hearing, these items go well beyond the affirmative statements in the Division's amended answer and are properly vacated.

With respect to item 3, paragraphs 1 through 4 of the Division's amended answer, by which the Division denies having sufficient knowledge or information to form a belief, or neither admits nor denies, adequately addresses this demand.

Items 5 through 12 and 14 through 16 of this demand go beyond an amplification of the affirmative statements made by the Division in its answer and go beyond demanding particulars regarding the basis for the assessment. These items are therefore properly vacated.

F. The "Demand for a Bill of Particulars: Demand for Documents" seeks the production of documents. "It is not the function of a bill of particulars to provide evidentiary material" (***Frequency Electronics, Inc. v. We're Associates Co.***, 90 AD2d 822, 456 NYS2d 20).

Furthermore, the Rules of Practice preclude an administrative law judge from entertaining a motion for prehearing discovery (***see***, 20 NYCRR 3000.5[a]). Accordingly, the Division's motion to vacate this bill is granted.

Request for Admissions

G. Section 3000.6(b) of the Rules of Practice and Procedure provides as follows:

> *Admissions.* (1) At any time after service of the answer, and not later than 20 days before the hearing, a party may serve upon another party a written request for admission of the following:
>
> (i) the genuineness of any papers or documents;
>
> (ii) the correctness or fairness of representation of any photographs described in and served with the request; and
>
> (iii) the truth of any matters of fact set forth in the request.
>
> The request shall pertain to matters as to which the party requesting the admission believes there can be no substantial dispute at the hearing, and which are within the knowledge of the adverse party or can be ascertained by him or her upon reasonable inquiry. Copies of the papers , documents or photographs shall be served with the request unless copies have already been furnished.
>
> (2) The party to whom the request to admit is directed may choose to respond by serving a statement expressly admitting the matters in question. However, the party is deemed to admit each of the maters as to which an admission was properly requested unless, within 20 days after service of the request, or within such further time as the supervising administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission, a verified statement:
>
> (i) denying specifically the matters of which an admission is requested;
>
> (ii) setting forth in detail the reasons why those matters cannot be truthfully admitted or denied; or
>
> (iii) setting forth a claim in detail that the matter of which an admission is requested cannot be fairly admitted without some material qualification or explanation, that the matters constitute a trade secret or that such party would be privileged or disqualified from testifying concerning them. Where the claim is that the matters cannot be fairly admitted without

> some material qualification or explanation, the party must admit the matters with such qualification or explanation.
>
> (3) Any admission made, or deemed to be made, by a party pursuant to a request made under this section, is for the purpose of the pending proceeding only, and does not constitute an admission for any other purpose, nor may it be used in any other proceeding in the Division of Tax Appeals. The administrative law judge designated by the tribunal may, at any time, allow a party to amend or withdraw any admission on such terms as may be just. Any admission shall be subject to all pertinent objections to admissibility which may be interposed at the hearing.

H. With respect to the "Request for Admissions: Facts Within the Knowledge of the Division of Taxation," the following rulings are made:

(1) The Division's objection to paragraphs 1, 2, 3, 4, 5, 6, 31, 32, 35, and 36 as "compound, convoluted requests" and its objection to paragraphs 35 and 36 as "going to the very heart of the dispute" are rejected and the Division is directed to respond to these requests to admit in accordance with 20 NYCRR 3000.6(2).

(2) The Division objected to paragraph 7 on the grounds of relevancy. Such an objection is properly made at the hearing when evidence on this point is offered. Accordingly, the Division is directed to respond to paragraph 7 as clarified in paragraph 211 of petitioner's response to the Division's motion and as noted in Finding of Fact "13(a)" herein.

(3) The Division is directed to respond to paragraph 8 as clarified in paragraph 244 of petitioner's response to the Division's motion and as noted in Finding of Fact "13(b)" herein.

(4) The Division objected to paragraphs 9 through 26 on relevancy grounds. Such objections are properly made at the hearing. The Division is therefore directed to respond to such requests in accordance with 20 NYCRR 3000.6(2).

(5) The Division admitted paragraph 27.

(6) The Division's response to paragraph 28 is deemed an admission.

(7) The Division is directed to further respond to paragraphs 29 and 30, in light of the clarification of such requests as set forth in paragraphs 246 and 248, respectively, of petitioner's response to the Division's motion and as noted in Findings of Fact "13(c) and (d)."

(8) The Division's response to paragraphs 33 and 34 is nonresponsive. The Division is directed to respond to such requests.

I. The Division's responses to each of the requests in petitioner's "Request for Admissions: Genuineness of Papers and Documents," by which the Division declines to admit the genuineness of documents supplied by the petitioner, are satisfactory under Rule 3000.6(b)(2). Petitioner's objections to such responses are rejected.

J. With respect to petitioner's "Request for Admissions: Facts With Respect to Which There Can Be No Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry," the following rulings are made:

(1) The Division asserted that paragraphs 1, 3, and 21 are "objectionable on the grounds that they call for legal conclusions and go beyond the proper purpose and scope of demands for bills of particulars [sic]." The Division seeks an order vacating these requests.

(a) With respect to paragraph 1, which, as restated, requests an admission that "petitioner showed a New Jersey street address and claimed Non-Resident status on the IT-203 filed by petitioner for the tax year 1994," I note that in its answer the Division affirmatively stated that "at all relevant times petitioner was a nonresident of New York State." The Division's objection is rejected and the Division is directed to respond to this request to admit in accordance with 20 NYCRR 3000.6(2).

(b) Paragraph 3, which requests an admission that "Prudential is domiciled in the State of New Jersey," does call for a legal conclusion. Paragraph 21, which, as restated, requests an

admission that "that Prudential did not have a leave of absence plan which granted Petitioner any enforceable right, legal or otherwise, to take a leave of absence with pay during 1994 from Prudential," also calls for a legal conclusion. Accordingly, these requests are vacated.

(2) The Division's responses to paragraphs 6, 27 and 28 are satisfactory under section 3000.6(b)(2) of the Rules. Petitioner's objections to such responses are rejected.

(3) The Division's response to paragraph 18 is deemed an admission in light of exhibit P-1 which was attached to petitioner's response.

(4) The Division's responses to paragraphs 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, and 33 are satisfactory under section 3000.6(b)(2) of the Rules. Petitioner's objections to such responses are rejected.

(5) The Division's response to paragraph 16, which requests an admission that "petitioner resided in New Jersey at all times during the 36 days in question," is not satisfactory. I note that in its answer the Division affirmatively stated that "at all relevant times petitioner was a nonresident of New York State." The Division is directed to file a further response to this request.

K. Petitioner's motion for cancellation of the statutory notice based upon the Division's failure to provide, through the demands for bills of particulars, information related to issues of merger, waiver, and estoppel arising from the cancellation of assessment number L014431075 is denied without prejudice. Petitioner may raise these issues and introduce evidence with respect these issues at the hearing. Petitioner's alternative motion for an order of preclusion is also denied.

L. Petitioner's motion that the Division be found to have admitted certain allegations in the Division's amended answer is denied. In proceedings before the Division of Tax Appeals

"[a]ll pleadings shall be liberally construed so as to do substantial justice" (20 NYCRR 3000.4[a]). To grant petitioner's motion would result in a strict construction of the Division's pleading, resolving all ambiguity in favor of petitioner. In my reading of the Division's amended answer, all allegations in the petition are denied except where the amended answer specifically states otherwise.

M. Petitioner's motion for an order directing the Division to respond to all of petitioner's requests for admissions or, alternatively, an order finding that the Division is deemed to have admitted all of the facts as requested by petitioner is rendered moot by Conclusions of Law "H," "I," and "J."

N. Petitioner's motion for an order deeming that the Division's failure to deny paragraphs 1, 3, and 21 of "Request for Admissions: Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry" constitutes admissions, or, alternatively, that the Division be directed to reasonable inquiries with respect to such requests is moot in light of Conclusion of Law "J."

O. Petitioner's motion for an order finding that the Division's "failure to make reasonable inquiry" with respect paragraphs 1 through 5, 7 through 15, 17, and 19 through 33 of petitioner's "Request for Admissions: Facts With Respect to Which There Can be no Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry" constitutes an admission, or, alternatively, an order directing the Division to make reasonable inquiry of Prudential with respect to such requests is also moot in light of Conclusion of Law "J."

P. Petitioner's motion for cancellation of the notice based upon certain alleged actions of the Division's attorney or, in the alternative, removal of the Division's attorney, is denied. While I agree that the Division improperly denied paragraph 18 of petitioner's "Request for

Admissions: Facts With Respect to Which There Can Be No Substantial Dispute and Which Can be Ascertained Upon Reasonable Inquiry" (***see***, Conclusion of Law "J"), I find that the remaining allegations upon which this motion is based, i.e., paragraphs 304 through 310 and 312 through 322, are unsupported by the pleadings, motion papers and other documents filed by the parties.

Q. Petitioner's motion for a hearing to the extent that her motions and objections herein are not granted is denied. Oral argument is not heard on a motion unless the administrative law judge grants such a request (***see***, 20 NYCRR 3000.5[c]). I decline to grant petitioner's request for a hearing on the instant motion.

R. Finally, I note that this appears to be a fairly straightforward matter on both the facts and the law. Indeed, there appear to be broad areas where the facts are not likely in dispute. It would appear, however, from the instant motions that the parties have not communicated regarding the issues and facts of this case, including those facts which are not in dispute. I urge the parties to do so prior to the hearing.

S. The Division of Taxation's motion for an order vacating petitioner's Demands for Bills of Particulars is granted to the extent indicated in Conclusions of Law "D(2)," "E(2)," and "F"; the motion is in all other respects denied and the Division shall, within 20 days of the date of this order, provide petitioner with particulars with respect to items 6 and 13 as set forth in Demand for a Bill of Particulars: Citations (***see***, Conclusion of Law "D(1)") and items 4 and 13 as set forth in Demand for a Bill of Particulars: Facts (***see***, Conclusion of Law "E(1)").

T. The Division of Taxation's motion for an order vacating certain objectionable paragraphs in petitioner's requests for admissions is denied and the Division shall, within 20

days of the date of this order, provide to petitioner a response to the Requests for Admissions in accordance with Conclusions of Law "H(1), (2), (3), (4), (7), and (8)" and "J(1)(a) and (5)" herein.

U. Petitioner's motions as set forth in Finding of Fact "12(a), (b), (c), (g), and (h)" are denied in accordance with Conclusions of Law "B," "K," "L," "P," and "Q," respectively, and petitioner's motions as set forth in Finding of Fact "12(d), (e), and (f)" are deemed moot in accordance with Conclusions of Law "M," "N," and "O."

DATED: Troy, New York
May 9, 2002

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE